

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

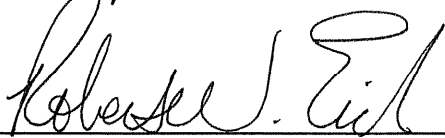
Claim of:)
County of San Bernardino,) No. CSM-4427
Claimant) Penal Code Section 2625
Chapter 1376, Statutes of 1976
Chapter 301, Statutes of 1983
Chapter 820, Statutes of 1991
Prisoner Parental Rights

DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted by the Commission on State Mandates as its decision in the above-entitled matter.

This Decision shall become effective on November 18, 1993.

IT IS SO ORDERED November 18, 1993.


Robert W. Eich, Executive Director
Commission on State Mandates

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of:

County of San Bernardino,

Claimant

No. CSM-4427

Penal Code Section 2625

Chapter 1376, Statutes

of 1976, Chapter 301, Statutes

of 1983, Chapter 820, Statutes

of 1991

Prisoner Parental Rights

PROPOSED STATEMENT OF DECISION

This claim was heard by the Commission on State Mandates (Commission) on September 23, 1993, in Sacramento, California, during a regularly scheduled hearing.

Ms. Marcia Faulkner appeared on behalf of the County of San Bernardino, and Mr. James Apps appeared on behalf of the Department of Finance.

Evidence both oral and documentary having been introduced, the matter submitted, and vote taken, the Commission finds:

ISSUE

Does Penal Code section 2625, as amended by Chapter 1376, Statutes of 1976 (Chapter 1376/76), Chapter 310, Statutes of 1983

(Chapter 310/83), and Chapter 820, Statutes of 1991 (Chapter 820/91), require local agencies to implement a new program or provide a higher level of service in an existing program, within the meaning of Government Code section 17514, and section 6 of article XIII B of the California Constitution?

BACKGROUND AND FINDINGS OF FACT

The test claim was filed with the Commission on December 31, 1992, by the county of San Bernardino (claimant).

The elements for filing a test claim, as specified in section 1183 of Title 2 of the California Code of Regulations, were satisfied.

The Commission observed that Penal Code section 2625 requires that when there is (1) an action that seeks to terminate the parental rights of any prisoner, or (2) where there is an action to determine whether the child of a prisoner should be found to be a dependent child of the court, the superior court of the county in which the action is pending, must issue a notice of the court proceeding to the prisoner. Moreover, the court must also issue an order for the removal of a prisoner from an institution and his/her delivery before the court, whenever the prisoner expresses his/her desire to be present during the adjudication of his/her parental rights.

The Department of Finance and the Department of Corrections stated that the requirements set forth in Chapter 1376/76 and

Chapter 301/83 are barred from being a part of the test Claim by the Brown-Presley Trial Court Funding Act (Trial Court Funding Act) waiver provisions. The departments noted that counties participating in the Trial Court Funding Act must waive their right to pursue reimbursement for any chaptered legislation that was chaptered before the Trial Court Funding Act became law and was not the subject of a test claim before the Trial Court Funding Act became law.

Moreover, the Commission observed that the Department of Finance provided a copy of the resolution from the county of San Bernardino's Board of Supervisors, adopted on December 19, 1988, opting into the Trial Court Funding Act program.

The Commission recognized that as a condition of participating in the Trial Court Funding Act program, Government Code section 77203.5 provides:

"(a) The initial decision by a county to opt into the system pursuant to Section 77300 shall constitute a waiver of all claims for reimbursement for state-mandated local programs not theretofore approved by the State Board of Control., the Commission on State Mandates, or the courts to the extent the Governor, in his discretion, determines that waiver to be appropriate; provided, that a decision by a county to opt into the system pursuant to Section 77300 beginning with the second half of the 1988-89 fiscal year shall not constitute a waiver of a claim for reimbursement based on a statute chaptered on or before the date the act which added this chapter is chaptered,- which is filed in acceptable form on or before the date the act which added this chapter is chaptered.
. . ."

The Commission found that under the provisions of the Trial Court Funding Act, the claimant has waived any claim to reimbursement

1 based upon a statute that was not the subject. of a test claim that
 2 was filed, in an acceptable form, with the Commission, on or before
 3 September 16, 1988, the date Government Code section 77203.5 was
 4 enacted.

5
 6 Therefore, because Chapter 13765176 and Chapter 301/83 were not the
 7 subject of a test claim that was filed with the Commission on or
 8 before September 16, 1988, the Commission found that under the
 9 provisions of the Trial Court Funding Act, these chapters are
 10 precluded from being a part of this test claim, because the
 11 claimant has waived any claim to reimbursement based on these
 12 statutes.

13
 14 The Commission further recognized that, in light of the Trial Court
 15 Funding Act, Chapter 820/91 is the only chaptered legislation
 16 included in this test claim that is eligible for consideration as
 17 a state mandated program. The Commission observed that Penal Code
 18 section 2625, as amended by Chapter 820/91, in pertinent part,
 19 provides:

20 "In any action brought under Section 232 of the Civil
 21 Code, and Section 366.26 of the Welfare and Institutions
 22 Code, where the action seeks to terminate the parental
 23 rights of any prisoner or any action brought under
 24 Section 300 of the Welfare and Institutions Code, where
 25 the action seeks to adjudicate the child of a prisoner a
 26 dependent child of the court, the superior court of the
 27 county in which the action is pending, or a judge
 28 thereof, shall order notice of any court proceeding
 regarding the action transmitted to the prisoner.

"

" . . . No proceeding may be held under Section 232 of the
 Civil Code or Section 366.26 of the Welfare and
 Institutions Code and no petition to adjudge the child of
 a prisoner a dependent child of the court pursuant to

subdivision (a), (b), (c), (d), (e), (f), (i), or (j) of Section 300 of the Welfare and Institutions Code may be adjudicated without the physical presence of the prisoner or the prisoner's attorney, unless the court has before it a knowing waiver of the right of physical presence signed by the prisoner or an affidavit signed by the warden, superintendent or other person in charge of the institution, . . . stating that the prisoner has, by express statement or action, indicated an intent not to appear at the proceeding."

" additions by Chapter 820/91 shown with emphasis)"

Based on the foregoing, the Commission found that Chapter 820/91 amended Penal Code section 2625 to include parental right actions brought under the provisions of Welfare and Institutions Code section 366.26, which in turn, pertains to minors who are adjudged to be dependent children of the court. Consequently, this amendment requires that a court order the presence of a prisoner when limitations concerning his/her parental rights are being adjudicated because his/her child is a dependent of the court.

In addition, the Commission found that Chapter 820/91 amended Penal Code section 2625 to include subdivisions (c), (e), (f), (i), and (j) of Welfare and Institutions Code section 300 as being eligible for hearings under Penal Code section 2625.

The Commission acknowledged that the Trial Court Funding Act precludes the reimbursement of costs related to "court operations," as these activities are already reimbursed by the Trial Court

1 Funding Act. Specifically, the Commission recognized Government
2 Code section 77203, which in pertinent part, provides:

3 "Reimbursement to an option county pursuant to this
4 chapter shall be in lieu of any payment for any prior or
5 current program for which reimbursement of state-mandated
6 local programs for the trial courts is claimed, and any
7 payment as provided in Section 77203.5. No claim for
reimbursement of a state-mandated local program may be
made by an option county for any cost of court
operations, . . ."
&Emphasis added)

8
9 The Commission noted that Gov. Code section 77003 defines "court
10 operations " to include:

11 ". . . those deputy marshals constables, and sheriffs
12 as the court deems necessary for court operations, . . ."

13 However, the Commission also recognized that the Judicial Council
14 List of Approved Costs contained in Rules of Court Section 810,
15 subdivision (a) , part 2, in pertinent part, provides:

16 "Sheriffs, marshals, and constables as the court deems
17 necessary for court operations; functions shall not
18 include supervisory overhead costs, transportation and
19 housing of detainees, or service of process in civil
cases"

20 Based on its review of Government Code section 77203, and
21 section 810 of the Rules of Court, the Commission recognized that
22 to the extent the claimant is complying with a state mandated order
23 of the court, the duties of the Sheriff's Department under Rules of
24 Court section 810 are already reimbursed under the Trial Court
25 Funding Act as "court operations." However, because Rules of Court
26 section 810 states that the transportation and housing of prisoners
27 are not "court operations," the Commission found that such
28

activities, as they relate to Penal Code section 2625, constitute a state mandated requirement.

APPLICABLE LAW RELEVANT TO THE DETERMINATION

OF-A REIMBURSABLE STATE MANDATED PROGRAM

Government Code section 17500 and following, and section 6, article XIIIIB of the California Constitution and related case law.

CONCLUSION

The Commission determines that it has the authority to decide this claim under the provisions of Government Code sections 17500 and 17551, subdivision (a).

The Commission concludes that the waiver provisions of the Trial Court Funding Act preclude Chapter 1376/76 and Chapter 301/83 from being a part of this test claim.

The Commission further concludes that Penal Code section 2625, as amended by Chapter 820/91, requires local agencies to implement a new program or a higher level of service in an existing program within the meaning of Government Code section 17514 and section 6 of article XIIIIB of the California Constitution, by expanding juvenile court actions eligible for parental attendance rights to include legal guardianship proceedings. Moreover, because the Trial Court Funding Act prohibits counties from claiming reimbursement for activities related to "court operations," the

1 Commission concludes that only the activities of transporting and
2 housing prisoners to and from the court are reimbursable as a state
3 mandated requirement.

4
5 Accordingly, such costs related thereto are costs mandated by the
6 state and are subject to reimbursement within the meaning of
7 section 6, article XIII B of the California Constitution.
8 Therefore, the claimant is directed to submit parameters and
9 guidelines, pursuant to Government Code section 17557 and Title 2,
10 California Code of Regulations, section 1183.1, to the Commission
11 for its consideration.

12
13 The foregoing conclusion pertaining to Penal Code section 2625 is
14 subject to the following conditions:

15 The determination of a reimbursable state mandated
16 program does not mean that all increased costs claimed
17 will be reimbursed. Reimbursement, if any, is subject to
18 Commission approval of parameters and guidelines for
19 reimbursement of the mandated program; approval of a
20 statewide cost estimate; a specific legislative
21 appropriation for such purpose; a timely-filed claim for
22 reimbursement; and subsequent review of the claim by the
23 State Controller's Office.

24 If the statewide cost estimate for this mandate does not
25 exceed one million dollars (\$1,000,000) during the first
26 twelve (12) month period following the operative date of
27 the mandate, the Commission shall certify such estimated
28 amount to the State Controller's Office, and the State
Controller shall receive, review, and pay claims from the
State Mandates Claims Fund as claims are received.
(Government Code section 17610.)